



STATE OF UTAH
DIVISION OF
WATER RIGHTS

Enforcement Procedures: A Brief Explanation

What are the steps in a Division of Water Rights enforcement action?

- Referrals are investigated and evaluated;
- Informal efforts are made to assure violator is aware of the issue under investigation;
- If warranted, a Notice of Violation and/or a Cease and Desist Order is sent;
- A preliminary conference may be held;
- A hearing may be held, if timely requested;
- A Final Order is issued;
- Reconsideration of the Final Order may be requested and granted;
- A Final Order may be amended or set aside;
- A Final Order may be appealed to District Court;
- Compliance inspections may be held.

Why did I receive a Notice of Violation (NOV) / Cease and Desist Order (CDO)?

Investigations and research have documented non-compliance with a State Engineer notice or order, or irregularities in the diversion or use of water as allowed by water right(s) per the records of the Division of Water Rights (Division).

Who can I talk to about a NOV or CDO?

The Division of Water Rights staff member assigned to coordinate enforcement actions is:

Kerry Carpenter, Enforcement Engineer
Telephone: (435) 592-2376
E-mail: kerrycarpenter@utah.gov
Office: 88 E Fiddlers Cyn Rd – Ste F
Cedar City UT 84721

What if I don't agree with the alleged violations or non-compliance?

You have the right to request a hearing on the issues involved in the NOV/CDO. You also have the right to respond to the NOV/CDO with documentation rebutting the allegations.

How do I request a hearing?

All hearing requests must be made in writing and submitted through one of the options described in this brochure. The request must include the State Engineer Agency Action (SEAA) number and must clearly and concisely state the specific issues that are in dispute, the supporting facts, and the relief sought. A hearing request must be *received* by the Presiding Officer within fourteen (14) days of the date of the NOV/CDO.

How do I respond to a NOV or a CDO?

All responses must be made in writing and submitted through one of the options described in this brochure. The response must be received within 14 days of the date of the NOV/CDO. Your response must include any information that you believe is relevant and that raises a genuine issue of material fact concerning the alleged violation or non-compliance.

What Are The Options For Filing

Submittals? There are three options for filing a hearing request and/or response to a NOV/CDO:

1) You may file by regular mail to the Presiding Officer listed in the NOV/CDO. The response

must be *received* before the expiration of the deadline associated with the submittal.

2) You may file electronically according to the directions included in the NOV/CDO.

3) You may file by FAX to the Presiding Officer at the FAX number listed in the NOV/CDO.

If filing electronically or by FAX, the signed original document must follow by regular mail, *postmarked* on or before the deadline date. All papers filed with the Division must be legibly hand-printed or typewritten on 8½ x 11-inch paper and must be signed and dated by you or your authorized representative. If necessary, maps may be larger than 8½ x 11-inches.

Is it possible to get an extension of time?

An extension of time may be granted for good cause shown. A request for an extension should be made before the end of the pertinent time period. It must be made in writing to the Presiding Officer and submitted through one of the options described in this brochure.

Who is the Presiding Officer?

Any qualified person designated by the State Engineer may serve as the Presiding Officer. This will usually be an Assistant State Engineer or Deputy State Engineer, but a Regional Engineer may be designated. The Presiding Officer's contact information for each enforcement action is listed in the NOV/CDO

What if I recognize or agree that I may have violated the water law or not complied with a notice or order of the State Engineer?

You may request a hearing with the Division of Water Rights to discuss a resolution of the alleged violations and requirements included in the NOV/CDO. If agreement can be reached concerning the issues during a preliminary conference, a Consent Order can be prepared.

What is a Consent Order?

A Consent Order is a settlement by stipulation. It is not necessarily an admission of a violation, but is an agreement concerning critical facts and the required compliance. A Consent Order can be agreed to any time before a Final Order is issued. A Consent Order is enforceable as a Final Order of the State Engineer. Reconsideration by the State Engineer cannot be requested for Consent Orders, nor can they be appealed to the court.

What happens if I don't request a hearing or respond to a NOV or a CDO by the deadline?

The Presiding Officer can issue a Default Order based on the facts in the NOV/CDO. A Default Order is a Final Order. A Default Order may also be issued at any time if you fail to continue to participate in a scheduled preliminary conference or hearing.

What is the purpose of a preliminary conference?

A preliminary conference involves all parties and its purpose is to simplify and clarify issues in dispute, determine areas of consensus, and stipulate agreements prior to a hearing or Final Order. The Presiding Officer may require that a preliminary conference be held at any time prior to a Final Order.

How are hearings and preliminary conferences conducted?

Hearings and conferences are conducted *informally* by the Presiding Officer. If you desire, an attorney or other professional may represent you. At hearings, all parties may call witnesses, present oral, documentary, or other evidence and cross-examine any witness. Witnesses will be required to give their testimony under oath or affirmation. All parties have access to public information in the

Division's files and to all materials and information gathered in the investigation, to the extent allowed by law. No evidence will be accepted after a hearing concludes unless otherwise ordered by the Presiding Officer.

How are the penalties determined?

The administrative fine imposed is a daily fine that begins to accrue on the first day the violation or non-compliance begins and may continue until compliance is achieved. The Division considers the following in calculating the amount of the potential fine:

- The value or quantity of water taken;
- The gravity of the violation including economic injury or impact to others;
- The violator's efforts to comply with the State Engineer's orders;
- The economic benefit obtained from the violation;
- Whether the violation occurred knowingly or unknowingly.

The State Engineer also has authority to order reimbursement of costs for enforcement, collection, and compliance inspections, as well as replacement of water taken without right.

What are the monies collected from the fines used for?

All monies collected from administrative fines and reimbursement of enforcement costs are presently deposited into the state's General Fund.

What if I am required to replace water used without a right?

If the State Engineer has determined that water must be replaced, you may be required to submit a plan describing your proposal for replacing the water. The plan must include all necessary details including the time frame for replacement. The plan must be approved by the State

Engineer. Water may be replaced using water rights you own or have leased.

What if I believe the Final Order is in error?

If you have participated in the enforcement process, you may request reconsideration of a Final Order within 14 days after the order is issued. The request must be in writing and submitted through one of the options described in this brochure. It must state the specific grounds upon which relief is requested. If the Presiding Officer does not issue a written order granting or denying the request for reconsideration within 14 days after the request is filed, the request is considered denied. Reconsideration of a Consent Order or a Default Order is not authorized.

Can I appeal a Final Order to the court?

An appeal may be made to the district court in Salt Lake County or the county where the alleged violation occurred. The request for judicial review must be filed within 20 days from the date the order was served on you or the date reconsideration is denied. The Division may grant a stay of the execution of the Final Order while an appeal is pending. A Default Order may be appealed to the district court.

What if I don't comply with the Final Order or pay the fines or enforcement costs?

The administrative fine and any enforcement costs associated with monitoring non-compliance may continue to accrue and your financial liability may increase. The Division may report the total amount of administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law. The Division may also seek enforcement of a Final Order through legal action.